

PART 571--MONITORING AND
INVESTIGATIONS

Current through June 16, 1998; 63 FR 32955

SCOPE

25 C.F.R. 571.1

This part sets forth general procedures governing Commission monitoring and investigations of Indian gaming operations.

DEFINITIONS

25 C.F.R. 571.2

As used in this subchapter, the following terms have the specified meanings: Commission's authorized representative means any persons who is authorized to act on behalf of the Commission for the purpose of implementing the Act and this chapter. Day means calendar day unless otherwise specified. Hearing means that part of a proceeding that involves the submission of evidence to the presiding official, either by oral presentation or written submission. Party means the Chairman, the respondent(s), and any other person named or admitted as a party to a proceeding. Person means an individual, Indian tribe, corporation, partnership, or other organization or entity. Presiding official means a person designated by the Commission who is qualified to conduct an administrative hearing and authorized to administer oaths, and has had no previous role in the prosecution of a matter over which he or she will preside. Respondent means a person against whom the Commission is seeking civil penalties under section 2713 of the Act.

Violation means a violation of applicable federal or tribal statutes, regulations, ordinances, or resolutions.

CONFIDENTIALITY

25 C.F.R. 571.3

Unless confidentiality is waived, the Commission shall treat as confidential any and all information received under the Act that falls (c) Upon the request of the Commission's authorized representative, the gaming operation shall photocopy, or allow the Commission's

within the exemptions of 5 U.S.C. 552(b) (4) and (7); except that when such information indicates a violation of Federal, State, or tribal statutes, regulations, ordinances, or resolutions, the Commission shall provide such information to appropriate law enforcement officials. The confidentiality of documents submitted in a multiple-party proceeding under part 577 of this chapter is addressed in S 577.8 of this chapter.

ENTRY OF PREMISES

25 C.F.R. 571.5

(a) The Commission's authorized representative may enter the premises of an Indian gaming operation to inspect, examine, photocopy, and audit all papers, books, and records (including computer records) concerning:

(1) Gross revenues of class II gaming conducted on Indian lands; and

(2) Any other matters necessary to carry out the duties of the Commission under the Act and this chapter.

(b) The Commission's authorized representative shall present official identification upon entering a gaming operation for the purpose of enforcing the Act.

**ACCESS TO PAPERS, BOOKS, AND
RECORDS**

25 C.F.R. 571.6

(a) Once the Commission's authorized representative presents proper identification, a gaming operation shall provide the authorized representative with access to all papers, books, and records (including computer records) concerning class II gaming or any other matters for which the Commission requires such access to carry out its duties under the Act.

(b) If such papers, books, and records are not available at the location of the gaming operation, the gaming operation shall make them available at a time and place convenient to the Commission's authorized representative.

authorized representative to photocopy, any papers, books, and records that are requested by the Commission's authorized representative.

MAINTENANCE AND PRESERVATION OF PAPERS AND RECORDS

25 C.F.R. 571.7

(a) A gaming operation shall keep permanent books of account or records, including inventory records of gaming supplies, sufficient to establish the amount of gross and net income, deductions and expenses, receipts and disbursements, and other information required in any financial statement, report, or other accounting prepared pursuant to the Act or this chapter.

(b) The Commission may require a gaming operation to submit statements, reports, or accountings, or keep specific records, that will enable the Commission to determine whether or not such operation:

(1) Is liable for fees payable to the Commission and in what amount; and

(2) Has properly and completely accounted for all transactions and other matters monitored by the Commission.

(c) Books or records required by this section shall be kept at all times available for inspection by the Commission's authorized representatives. They shall be retained for no less than five (5) years.

(d) A gaming operation shall maintain copies of all enforcement actions that a tribe or a state has taken against the operation, noting the final disposition of each case.

SUBPOENA OF WITNESSES

25 C.F.R. 571.8

By majority vote the Commission may authorize the Chairman to require by subpoena the attendance and testimony of witnesses relating to any matter under consideration or investigation by the Commission. Witnesses so summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

SUBPOENA OF DOCUMENTS AND OTHER ITEMS

25 C.F.R. 571.9

By majority vote the Commission may authorize the Chairman to require by subpoena the production of certain documents and other items that are material and relevant to facts in issue in any matter under consideration or investigation by the Commission.

GEOGRAPHICAL LOCATION

25 C.F.R. 571.10

The attendance of witnesses and the production of books, papers, and documents, may be required from any place in the United States at any designated place of hearing.

DEPOSITIONS

25 C.F.R. 571.11

(a) Any party wishing to depose a witness shall file a request with the Commission or, if a presiding official has been designated under part 577 of this chapter, to the presiding official. Such a request shall not be granted except for good cause shown. A Commissioner or a presiding official may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or investigation, except that Commission personnel may not be questioned by deposition for the purposes of discovery, but may be questioned by written interrogatories as authorized by the Commission or a presiding official. Commission records are not subject to discovery under this chapter. The inspection of Commission records is governed by S 571.3 of this part and the Freedom of Information Act, 5 U.S.C. 552. Depositions under this section may be taken before any person designated by the Commission or a presiding official, and who has the power to administer oaths.

(b) A party or a Commissioner (or a person designated by a Commissioner under paragraph (a) of this section) proposing to take a deposition under this section shall give reasonable notice to the Commission and the parties, if any, of the taking of a deposition. Notice shall include the name of the witness and the time and place of the deposition.

(c) Every person deposed under this part shall be notified of his or her right to be represented by counsel during the deposition, and shall be required to swear or affirm to testify to the whole truth. Testimony shall be reduced to writing and subscribed by the deponent. Depositions shall be filed promptly with the Commission or, if a presiding official has been designated, with the presiding official.

(d) Witnesses whose depositions are taken as authorized in this section, and the persons taking the same, shall be severally entitled to the same fees as are paid for like services in the courts of the United States.

request by the Commission's authorized representative.

AUDIT STANDARDS

25 C.F.R. 571.12

A tribe shall engage an independent certified public accountant to provide an annual audit of the financial statements of each gaming operation on Indian lands. Such financial statements shall be prepared in accordance with generally accepted accounting principles and the audit(s) shall be conducted in accordance with generally accepted auditing standards. Audit(s) of the gaming operation required under this section may be conducted in conjunction with any other independent audit of the tribe, provided that the requirements of this chapter are met.

COPIES OF AUDIT REPORTS

25 C.F.R. 571.13

A tribe shall submit to the Commission a copy of the report(s) and management letter(s) setting forth the results of each annual audit within 120 days after the end of each fiscal year of the gaming operation.

RELATIONSHIP OF AUDITED FINANCIAL STATEMENTS TO FEE ASSESSMENT REPORTS

25 C.F.R. 571.14

A tribe shall reconcile its quarterly fee assessment reports, submitted under 25 CFR part 514, with its audited financial statements and make available such reconciliation upon

PART 516--TESTIMONY OF COMMISSIONERS AND EMPLOYEES AND FORMER COMMISSIONERS AND FORMER EMPLOYEES RESPECTING OFFICIAL DUTIES; RESPONSE TO SUBPOENA

Sec. 516.1 What is the purpose of this part and to whom does it apply?

(a) The purpose of this part is to promulgate regulations regarding the release of official National Indian Gaming Commission information and provision of testimony by National Indian Gaming Commission personnel with respect to litigation or potential litigation and to prescribe conduct on the part of National Indian Gaming Commission personnel in response to a litigation-related request or demand.

(b) This part applies to requests or demands that are litigation-related or otherwise arise out of judicial, administrative or other legal proceedings (including subpoena, order or other demand) for interview, testimony (including by deposition) or other statement, or for production of documents relating to the business of the National Indian Gaming Commission, whether or not the National Indian Gaming Commission or the United States is a party to the litigation. It does not, however, apply to document requests covered by 25 CFR Parts 515 and 517.

(c) To the extent the request or demand seeks official information or documents, the provisions of this part are applicable to Commissioners, employees, and former Commissioners and former employees, of the National Indian Gaming Commission.

Sec. 516.2 When may a person to whom this part applies give testimony, make a statement or submit to interview?

(a) No person to whom this part applies, except as authorized by the Chairman or the General Counsel pursuant to this regulation, shall provide testimony, make a statement or submit to interview.

(b) Whenever a subpoena commanding the giving of any testimony has been lawfully served upon a person to whom this part applies, such individual shall, unless otherwise authorized by the Chairman or the General Counsel, appear in response thereto and respectfully decline to testify on the grounds that it is prohibited by this regulation.

(c) A person who desires testimony or other statement from any person to whom this part applies may make written request therefor, verified by oath, directed to the Chairman setting forth his or her interest in the matter to be disclosed and designating the use to which such statement or testimony will be put in the event of compliance with such request: *provided*, that a written request therefor by an official of any federal, state or tribal entity, acting in his or her official capacity need not be verified by oath. If it is determined by the Chairman or the General Counsel that such statement or testimony will be in the public interest, the request may be granted. Where a request for a statement or testimony is granted, one or more persons to whom this part applies may be authorized or designated to appear and testify or give a statement with respect thereto.

Sec. 516.3 When may a person to whom this part applies produce records?

(a) Any request for records of the National Indian Gaming Commission shall be handled pursuant to the procedures established in 25 CFR Parts 515 and 517 and shall comply with the rules governing public disclosure as provided in 25 CFR Parts 515 and 517.

(b) Whenever a subpoena duces tecum commanding the production of any record has been lawfully served upon a person to whom this part applies, such person shall forward the subpoena to the General Counsel. If commanded to appear in response to any such subpoena, a person to whom this part applies shall respectfully decline to produce the record on the ground that production is prohibited by this part and state that the production of the record(s) of the National Indian Gaming Commission is a matter to be determined by the Chairman or the General Counsel.

Sec. 516.4 How are records certified or authenticated?

(a) Upon request, the person having custody and responsibility for maintenance of records which are to be released under this part or parts 515 or 517 may certify the authenticity of copies of records that are requested to be provided in such format.

(b) A request for certified copies of records or for authentication of copies of records shall be sent to the National Indian Gaming Commission, Attention: Freedom of Information Act Officer.